

UNION OF INDIA AND ORS.

v.

DIPAK KUMAR SANTRA

(Civil Appeal No. 8535 of 2002)

MAY 06, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

Army Rules, 1954 – r. 13 – Discharge under – On the ground that the employee concerned was not likely to become efficient soldier – Writ petition – Dismissal of by Single Judge of High Court on the ground that the competent authority had authority to discharge u/r.13 and that the High Court lacked jurisdiction to entertain the petition – Division Bench of High Court held that the employee could be appointed on the available vacancy – On appeal, held: Since r.13 is applicable to the facts of the case, order of Division Bench is not sustainable – Service Law – Discharge.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8535 of 2002.

From the Judgment/Order dated 22.1.2001 of the High Court of Calcutta in MAT No. 653 of 1998.

B.V. Balaram Das for the Appellant.

S.K. Bhattacharya for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Calcutta High Court allowing the appeal MAT No. 653 of 1998. In said appeal challenge was to the order passed by the learned Single Judge of the High Court dated 4.12.1997 whereby the writ petition filed

A by the present respondent was dismissed. The writ petitioner had challenged the order passed by the Army authorities discharging the writ petitioner from service purportedly under Rule 13(3) of the Army Rules, 1954 (in short 'The Rules'). The respondent was discharged from the service on the ground that
 B he had failed twice in the clerks' proficiency and aptitude test and for that reason he could not be re-mustered on account of absence of any vacancy in the post of store keeper or any trade. Learned Single Judge held that in view of the Rule 13 the competent authority is entitled to discharge the present
 C respondent who was not considered likely to become efficient soldier. It was also noticed that the cause of action for the writ petition arose wholly outside the jurisdiction of the High Court. The writ petitioner was, therefore, dismissed by the impugned order, Division Bench of the High Court held that there was a
 D vacancy available and the writ petitioner can be appointed against the vacancy if such vacancy is released for his appointment. The order was directed not be treated as precedent.

E 2. Learned counsel for the appellant submitted that in view of the findings of the learned Single Judge that Rule 13(2) of the Rules clearly ruled out the relief claimed by writ petitioner in addition to the issue of jurisdiction of Calcutta High Court to deal with matter, the Division Bench could not have granted relief. The learned counsel for the respondent submitted that
 F on the peculiar facts of the case, the Division Bench of the High Court was justified in its view.

G It is not in dispute that Rule 13(3) of the Rules clearly applied to the facts of the case. Reference has been made to the learned counsel for the appellants to the letter of the Army Headquarter, New Delhi laying down the procedure required to be followed in respect to individuals who fail in the clerks' proficiency and aptitude test while undergoing the basic military training. We need not go into the applicability of the letter referred to, in view of the clear stipulation in Rule 13 (3) of the
 H

Rules, which has application to the facts of the case.

3. Rule 13(3) so far as relevant reads as follows :

"13. Authorities empowered to authorise discharge.- (1) Each of the authorities specified in column 3 of the Table below shall be the competent authority to discharge from service person subject to the Act specified in column 1 thereof on the grounds specified in column 2.

(3) In this table "commanding officer" means the officer commanding the corps or department to which the person to be discharged belongs except that in the case of junior commissioned officers and warrant officers of the Special Medical Section of the Army Medical Corps, the "commanding officer" means the Director of the Medical Services, Army, and in the case of junior commissioned officers and warrant officers of Remounts, Veterinary and Farms Corps, the "Commanding Officer" means the Director remounts, Veterinary and Farms.

Category	Grounds of discharge	Competent authority to authorise discharge	Manner of discharge
1	2	3	4
Persons enrolled under the Act but not attested	IV. All classes of discharge	Commanding Officer of Officer Commanding Recruit Reception Camp or a Recruiting, Technical Recruiting or Deputy Technical Recruiting Officer.	In the case of persons requesting to be discharged before fulfilling the conditions of of their enrolment the Commanding officer will exercise this power only where he is

A	1	2	3	4
B				satisfied as to the desirability of sanctioning the application that the strength of the unit will not hereby be unduly reduced. Recruits who are considered unlikely to become efficient soldiers will be dealt with under this item.
C				

D 4. The High Court's judgment is clearly unsupportable and the writ petition filed by the respondent shall be treated as dismissed. The appeal is allowed. No costs.

K.K.T.

Appeal allowed.